IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13256 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PRADIPBHAI BRIJBHUSAN SHAH - Petitioner(s)
Versus
COMMISSIONER OF POLICE & 2 - Respondent(s)

==========

Appearance :
MR PRASHANT MANKAD for Petitioner(s) : 1,
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 25/08/2006

ORAL JUDGMENT

By filing the present petition, the petitioner-detenu has challenged his detention order dated 03.12.2005 by which he is detained as a 'dangerous

person' under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to 3 criminal cases pending against the detenu for offences punishable under sections 397, 461, 114 etc. of the Indian Penal Code. It is alleged that the detenu has committed theft of computers and other articles. The detaining authority, after recording statement of some witnesses, has found that the activities of the detenu are such that it will prejudicially affect public order, and, therefore has detained the petitioner as a 'dangerous person'.

Learned advocate for the petitioner submitted that so far as pending criminal cases are concerned, all the cases are under the provisions of the Indian Penal Code and they are individual cases. He further submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> "So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into

account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

It is also argued by learned advocate for the petitioner that the petitioner was already in judicial custody at the time of passing of detention order and it was not necessary to detain him under PASA. He further submitted that though it is stated in the grounds of detention that the petitioner may be released on bail but the detaining authority has not given cogent reasons for justifying its say that the petitioner may be released on bail.

Considering the aforesaid judgment, so far as pending criminal cases are concerned, in my view, it can be said that the petitioner has violated law and order and registration of aforesaid cases, itself, cannot be said to be an act of violating public order. There is nothing on record to suggest that registration of criminal case may disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality.

In the result, this petition is allowed. Order of detention passed against the detenu dated 03.12.05 is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other offence.

Learned advocate for the detenu makes a voluntary statement that the detenu will not enter the limits of Ahmedabad Police Commissionerate area upto 1st December 2006 except for attending the criminal case. This voluntary statement is recorded. It is for the learned Assistant Government Pleader to inform the concerned authorities about the voluntary statement and it is for the concerned authorities to monitor the same.

Rule made absolute accordingly. No order as to costs.

[P. B. MAJMUDAR, J.]

mathew